IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 305 OF 2004

Shankar Harish Jagtap ...Petitioner
Vs.
Union of India & Ors. ...Respondents

Mr.Y.M.Pendse for Petitioner
Mr.Suresh Kumar for Respondent Nos.1 to 4
Mr. J.D.Utangale for Respondent No.5

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.
DATED: 11TH AUGUST, 2005

P.C.

1. Heard Mr. Pendse in support of this Petition. Rule. Rule made returnable forthwith. Mr.Suresh Kumar appears for Respondents 1 to 4 and Mr.Utangale appears for Respondent No.5. The Petitioner was working for garbage collection under the Respondent No.5 Bank during service period in the years 1997-1998. It is his case that he did complete 240 days prior to discontinuation of his services and therefore was entitled to appropriate protection of the Labour laws. He sought a reference of his dispute arising out of his alleged illegal termination. The request for reference has been rejected by the order dated 21st November 2003 passed by the Ministry of Labour. The order reads as follows :-

. ‘‘As the applicant has not worked for 240 days continuous service during a calendar

year, hence, dispute has no merit to refer.’’

2. Mr Pendse learned Counsel appearing for the Petitioner submits that the Officer concerned was obviously in error in observing that the Petitioner has not completed 240 days during a calendar year. His submission is that what is expected is that one must complete 240 days within a period of preceding 12 calendar months to get the protection of the definition of continuous service under Section 25(b) of the Industrial Disputes Act, 1947. The Officer has positively missed the point.

3. Mr.Utangale appearing for Bank has filed an affidavit of the Assistant General Manager of the Bank and has placed on record the statement of the Bank, according to which the Petitioner did not complete 240 days.

4. In our view this is a matter which has got to be decided by the Adjudicating Authority. It is not for the Labour Commissioner to decide as to whether the person concerned has completed 240 days or not. That is a matter to be decided on presentation of the record and on evidence of either parties which is a jurisdiction of the Adjudicating Authority. The Referring Authority cannot resolve the dispute by not referring it for such unsustainable reasons. In the circumstances we set aside this order dated 21st

November 2003 and direct Respondents 1 to 4 to refer the demand raised by the Petitioner arising out of his discontinuance of service and seeking appropriate order. Reference to be made within three months from receiving the order.

. Rule is made absolute as above without any order as to costs.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)